

STATE OF MICHIGAN
COURT OF APPEALS

KOZAK CHEVROLET, INC.,

Plaintiff-Cross-Appellant,

and

KOZAK REALTY ASSOCIATES,

Plaintiff,

v

NAJIB HAKIM and DOROTHY HAKIM,

Defendants/Cross-Defendants,

and

RONALD K. OLZMANN,

Defendant-Cross-Appellee.

UNPUBLISHED

July 15, 2003

No. 220935

Wayne Circuit Court

LC No. 96-607609-CZ

Before: Hoekstra, P.J., and Smolenski and Fort Hood, JJ.

PER CURIAM.

Plaintiff Kozak Chevrolet, Inc., appeals as of right from the trial court's judgment dismissing the complaint against defendant Ronald K. Olzmann.¹ We affirm.

This action arises out of the purchase of an automobile dealership by defendant and Najib Hakim. Defendant, a lawyer with experience in automotive dealerships, purchased a one-third interest in Metro-Chevrolet-GEO, Inc. (Metro), while Hakim held the remaining two-thirds interest in the corporation. After the business relationship soured, defendant was unable to

¹ Plaintiff raised their claim on cross appeal, and this appeal was consolidated with docket numbers 221073 and 225064. The cross appeal is the only claim remaining after the parties resolved all other claims. Accordingly, the order consolidating the cases was vacated.

purchase Hakim's interest. Ultimately, Hakim fired defendant and had him removed from the premises. Although Hakim was financially able to continue the dealership, Hakim withdrew his personal guarantee and closed the Metro dealership, transferring the assets of Metro to his new automotive dealership. The closure of the dealership was to the detriment of plaintiff, the corporate entity that had reassigned its interest in the franchise to Metro. Consequently, plaintiff filed suit against Hakim and Olzmann to disregard the corporate structure and hold the men personally liable for damages owed by Metro to plaintiffs. The trial court concluded that this remedy was proper with regard to Hakim only.

Plaintiff alleges that the trial court erred in refusing to pierce the corporate veil with respect to defendant. We disagree. "An appellate court's review of a decision not to pierce the corporate veil is de novo because of the equitable nature of the remedy." *Foodland Distributors v Al-Naimi*, 220 Mich App 453, 456; 559 NW2d 379 (1996). However, when reviewing an equitable determination rendered by the trial court, this Court reviews the supporting findings of fact for clear error. *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992). Furthermore, where witnesses testify to diametrically opposed assertions of fact, the test of credibility lies with the trier of fact. *Kalamazoo Co Rd Comm'rs v Bera*, 373 Mich 310, 314; 129 NW2d 427 (1964).

The fiction of a distinct corporate entity separate from stockholders was created to serve the ends of justice, but may be ignored by the courts when invoked to subvert justice. *Allstate Ins Co v Citizens Ins Co*, 118 Mich App 594, 600; 325 NW2d 505 (1982). Piercing the corporate veil traditionally occurs when there is a unity of interest of the stockholders, and the corporate entity has been used in an attempt to avoid legal obligations. *Id.* To pierce the corporate veil, the corporate entity must be a mere instrumentality of another entity or individual, and the corporate entity is used to commit a fraud or wrong, resulting in an unjust loss or injury to the plaintiff. *Foodland, supra*. The entire spectrum of relevant facts are examined to determine if piercing the corporate veil is warranted, and the facts are assessed against any economic justification to determine if the corporate form was abused. *Klager v Robert Meyer Co*, 415 Mich 402, 411-412; 329 NW2d 721 (1982). Improper corporate conduct by an individual will not be attributed to another where notions of equity and justice do not require it. See *Dep't of Consumer & Industry Services v Shah*, 236 Mich App 381, 394; 600 NW2d 406 (1999).

In the present case, we cannot conclude that the trial court's factual findings with respect to defendant were clearly erroneous. The testimony at trial by the witnesses diverged extensively. Defendant characterized his conduct as permissible in light of the agreement to draw the same monetary benefits and the agreement to receive a loan. Defendant accused Hakim of abusing the corporate entity by providing outlandish benefits such as free services and demo vehicles to his friends and family. Defendant took measures to re-establish the dealership following difficulties with federal liens. Hakim proposed bankruptcy and a new dealership to General Motors, withdrawing his personal guarantee. The testimony of the part-time accountant and the office manager also diverged regarding the stockholder that committed corporate abuse.

The trial court resolved the factual dispute against Hakim and in favor of defendant. Thus, the test of credibility rested with the trial court as the trier of fact, *Bera, supra*, and we cannot conclude that the trial court's factual findings were clearly erroneous on this record.² *Morren, supra*.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Michael R. Smolenski

/s/ Karen M. Fort Hood

² In support of reversal, plaintiff also cites to the differences in the verdicts rendered by the jury and the trial court in the equitable action. While federal case law precludes a judge and jury involved in a legal and equitable action from rendering inconsistent verdicts, see *Therma-Tru Corp v Peachtree Doors, Inc*, 44 F3d 988, 994-995 (Mich 1995), Michigan law has not adopted federal precedent. *Abner A Wolf, Inc v Walch*, 385 Mich 253, 265-266; 188 NW2d 544 (1971); *Phinney v Perlmutter*, 222 Mich App 513, 557-558; 564 NW2d 532 (1997).